Nos. 18510 to 18533, inclusive, and 18866 to 18872, inclusive.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED AIR LINES, INC.,

Appellant,

vs.

JANICE WIENER, *et al.,* and CATHERINE B. NOLLENBERGER, *et al.,* (excluding FAITH C. PARIS, *et al*)., *Appellees.*

UNITED STATES OF AMERICA,

Appellant,

vs.

JANICE WIENER, *et al.,*

Appellees,

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

This Petition for Rehearing is limited to that portion of the Court's opinion appearing under the heading "INCREASE OF JURY'S DAMAGE AWARDS" [Slip Opinion, pp. 36-43], relating to the Matlock and Nollenberger cases.

The opinion of the Court on this point states:

> "The jury was admonished to award damages in accordance with all the instructions of the court. No party specifies as error the giving of any of the instructions set forth in the margin.

> "We will not speculate as to the weight, if any, accorded by the jury to one or more of the italicized factors appearing in such instructions. Suffice it to say that the answers to the eleven special interrogatories do not exhaust all of the factors of damage included within the instructions, and therefore no square conflict exists between the answers and the general verdict. *We are not called upon to consider either whether the jury should not have been permitted to consider one or more of the italicized factors . . .*" [Slip Opinion, pp. 41-43.] (Emphasis added.)

The giving of a general instruction which embraces general principles, some of which may not be applicable to the evidence in the case is not necessarily either error or prejudicial. A jury cannot properly apply a principal of law unless there is evidence in the record to which the principle applies.

In this case the Court has held that the instructions given with respect to damages include matters which go beyond the bounds of the special interrogatories and that, therefore, the special interrogatories do not afford a sufficient basis for mathematically computing the total damages from the special findings.

If, however, as appellees contend, there was no evidence relating to any matters which the jury properly could have considered in determining damages other than those embraced within the interrogatories, then a computation based upon the answers to the special interrogatories would cover all of the matters to which the evidence relates and would not be erroneous. A rehearing should be granted to consider whether or

not there was any evidence to support any element in the computation of damages not in fact included within the special interrogatories.

Respectfully submitted,

JOHNSON & LADENBERGER,
MARGOLIS & MCTERNAN,

By BEN MARGOLIS,

Attorneys for Appellees Matlock and Nollenberger.

Certificate.

BEN MARGOLIS, one of the attorneys of record for appellees herein, herewith certifies that this Petition for Rehearing is in his judgment well founded and is not interposed for delay.

BEN MARGOLIS

See also Vol. 3239

NO. 18562

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HELEN HERRERO PEREZ, Appellant, vs. THE ESTATE OF VICENTE PANGELINAN HERRERO, et al., Appellees.	PETITION FOR REHEARING

The Appellant above named respectfully petitions this Honorable Court for a rehearing of the appeal in the above-captioned cause or a clarification of the opinion and, in support of this petition represents to the court as follows:

Appellant fully agrees with the law as found by this court particularly with the holding as to the rule that a court must take judicial notice of the prior law.

Appellant believes, however, that the court has misconstrued the record in this case and the relief sought.

It is appellant's belief that such determination and application is the function and duty of the lower court.

Basically the relief sought here by appellant is that the court below must take judicial knowledge of the former law, as this court did state; that, as we believe is conceded by all

rights vested under a former law cannot be divested by a subsequent enactment and an opportunity for the lower court to determine and apply such law when found, to the facts of the instant case.

The record discloses the great confusion of terms, the discussion of foreign law, not the law of the jurisdiction as it formerly existed and the insistence that the former law must be proven by the rules for proving a foreign law. In this confusion and fog of terms no opportunity ever appeared or was given to refresh the courts knowledge by means of the only method available, the records of the cases in the District Court of Guam.

One cannot prove the law of Guam by means of certified and authenticated copies of the law of the Kingdom of Spain.

It may have escaped notice that the District Court of Guam clearly recognized the holding in Calvo v. Martinez 6-55 in that Court since it discussed that case in the opinion of 26 December 1962. Presumably it had the case file before it.

Appellant submits that the District Court of Guam was aware of the former laws of Guam and should have determined the question of vested rights under that law.

Appellant believes that the lower court erroneously considered the question as purely a matter of probate law and did not discuss the constitutional question sought to be presented to it. If such rights existed and were vested by

former law they were not part of the estate and could not be disposed of in the probate proceedings.

Appellant submits that from the record in this proceeding and the evident confusion in the courts below that the findings of this court should be modified to permit and direct the lower court to find and determine the former law of Guam and to determine what, if any, rights were thereby vested.

For the foregoing reasons, this petition for rehearing should be granted.

s/ Finton J. Phelan, Jr.
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UNINCORPORATED TERRITORY OF GUAM)
) ss.
CITY OF AGANA)

Finton J. Phelan, Jr., being first duly sworn, on oath certifies and says: That he is one of the attorneys

for appellant in this cause; that he makes this certificate in compliance with Rule 23 of the rules of this court; that in his judgment the within and foregoing petition for rehearing is well founded and is not interposed for purposes of delay.

s/ Finton J. Phelan, Jr.
FINTON J. PHELAN, JR.

Subscribed and sworn to before me at Agana, Guam, this 18th day of June 1964.

s/ Helena F. Phelan
HELENA F. PHELAN
Notary Public in and for the
Unincorporated territory of
Guam

My commission expires: April 13, 1967